

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ARTHUR LOPEZ, individually, and on behalf of himself, and all other similarly situated individuals,

Plaintiff,

V.

DON HERRING LTD., a Texas Corporation, TACITO & ASSOCIATES, INC., a Texas Corporation, BB DIRECT INC., a Florida Corporation, MONICA BRAVERMAN, an individual, and Doe Individuals and Corporations 1-100 inclusive,

CIVIL ACTION NO. 3:16-CV-02663-B

Defendant.

BB DIRECT, INC.'S MOTION TO DISMISS AND MOTION TO STRIKE

Defendant BB Direct, Inc. (“BB Direct”) files this Motion to Dismiss and, in the alternative, Motion to Strike, respectfully showing the Court the following:

BB Direct moves to dismiss Plaintiff's Class Action Complaint ("Complaint") pursuant to FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) for failure to state a claim. In his Complaint, Plaintiff fails to set forth how any private or confidential information was *knowingly* obtained by BB Direct *from a state motor vehicle record*. Thus, Plaintiff fails to state facts sufficient to support a claim against BB Direct under 18 U.S.C. § 2721 *et seq.*, the Driver's Privacy Protection Act. Pursuant to FED. R. CIV. P. 12(b)(6), the Court should dismiss Plaintiff's Complaint for failure to state a claim upon which relief may be granted. Contemporaneously with this Motion, BB Direct has filed its Brief in Support of Motion to Dismiss and Motion to Strike in accordance with Local Rule 7.1.

In the alternative, BB Direct moves to strike portions of Plaintiff's Complaint that are redundant, irrelevant, immaterial, impertinent, or scandalous pursuant to FED. R. CIV. P. 12(f) and set forth in BB Direct's Brief.

PRAYER

Defendant BB Direct, Inc. respectfully requests that the Court dismiss Plaintiff's Class Action Complaint pursuant to FED. R. CIV. P. 12(b)(6) for failure to state a claim. Alternatively, BB Direct respectfully requests the Court strike those portions of Plaintiff's Class Action Complaint specified in BB Direct's Brief pursuant to FED. R. CIV. P. 12(f). BB Direct further respectfully requests all other relief, at law or equity, to which it is justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

/s/ George N. Wilson, III

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**ATTORNEYS FOR DEFENDANT
BB DIRECT, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2017, BB Direct, Inc.'s Motion to Dismiss and Motion to Strike was filed with the Clerk of the U.S. District Court, Northern District of Texas using the CM/ECF system, sending notification of such filing(s) to all counsel of record.

/s/ George N. Wilson, III